

Judicial System and Public Policy: Strategy for Expeditious Disposal of Backlog

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ABSTRACT

This study aims to identify the causes of delayed justice in Karachi district courts and analyse the critical causes of delay that the Pakistani judicial and legal system is confronting daily. Article 37 (d) of the Constitution of the Islamic Republic of Pakistan emphasise speedy, expeditious and inexpensive justice. World Justice Project Rule of Law Index has ranked Pakistan 130 out of 139 countries on various parameters, including civil and criminal courts. This research makes a comprehensive analysis of civil and criminal litigation in Pakistan for delay reduction. Unfortunately, less has been done previously in Pakistan and especially equal to none of quantitative. This research will focus on the quantitative aspect regarding the rule of law. Moreover, this study used factor analysis to identify the top contributing factors that cause subordinate courts delays. The linear regression model is used to determine and test the directions of the independent variables. This research measures significance of these factors to reject the null hypothesis at a 5% interval level. Similarly, linear regression is used for the cost of litigation to identify the relationship between independent and dependent variables, which is the "cost of each hearing". The results show that unnecessary adjournments on frivolous grounds are the most contributing factor of the delayed justice and filing of the miscellaneous applications on frivolous grounds, lack of skills and standardised level of training of both advocates as well as learned judges.



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INTRODUCTION

Article 37 D of the Constitution of the Islamic Republic of Pakistan 1973 envisages expeditious, inexpensive justice and "early disposal of cases" for all the citizens of Pakistan. The National Judicial Policy has the same narrative ([National Judicial Policy, 2012](#)). This study highlights the economic and monetary clutches/constraints for a litigant to pursue his case. One such study on excessive cost of litigation conducted by Harish Narrasappa of Daksh Foundation, India ([Daksh, 2016](#)) has inspired this study to ascertain the cost of litigation and gauge the extent to which a litigant spent his proportion of his livelihood on litigation alongside determining the fundamental factors and dynamics which maneuvers the delay in case disposal. According to the statistics by L.J.C.P., the district judiciary, session judges, additional session judges, senior civil judges and civil judges is also faced with an enormous pendency of 1,541,119 cases. The district judiciary of Punjab has 1,362,423 pending cases; the district judiciary of Sindh has 115815; the district judiciary of K.P. has cases 230474; the district judiciary of Balochistan has 16034 cases; and the district judiciary of Islamabad has 48244 cases awaiting disposal ([Zia, 2018](#)). This study reflects the deeper picture of the Pakistani Legal System and identifies as many as 41 probable factors of delayed justice in District Courts Karachi (excluding Malir Court). Out of 41 factors, the most contributing factors of delayed justice are discovered through rigorous data collection. The responses were collected from 100 lawyers of District Courts and High Court Karachi and 100 litigants.

Moreover, this research, being first and foremost of its kind in District Courts Karachi where the cost of litigation is also examined and analysed, will act as a foundation stone for multiple research avenues to be embarked within quantitative perspective in the years come. Consequently, the public is losing trust in the district and subordinate judiciary, and long delaying cases are adding more problems to the deteriorating situation ([The Nation, 2013](#)). This points out more questions on the competence of the lawyers, vigilance of bar associations, learned judicial officers and efficiency of the court system.

Moreover, impending justice also puts a burden on the pockets of litigants, causing them to lose quite a considerable amount of their earnings on court hearings and other miscellaneous expenses they incur on every date of hearing. It continues until the disposal of their case ([Abbas, 2021](#)). This study aims to quantify the delaying factors of Karachi city court from the litigants and lawyers perspectives to lay the foundation for the upcoming research in the Pakistani judicial system. And indicate numerous factors while listing the most significant 18 factors that cause unnecessary delay in judicial proceedings. Furthermore, this study aims to ascertain litigation costs and how expensive it is to seek justice. The Constitution of Pakistan 1973 lays vast emphasis on inexpensive and expeditious justice. This research, however, is confined to the city and district courts Karachi only, which include districts Central, South, East and West.

LITERATURE REVIEW

Civil justice delays are a persistent and widespread issue; the situation is particularly concerning in developing nations like Pakistan. Nearly every month, the backlog of cases such as civil cases expand in the lower courts of the country. Various commissions have been constituted on a regular

basis to look at the causes for the delay. The current research examines this issue considering previous national and international investigations. Lawyers, on the other hand, would always request adjournments to expand their number of court appearances in order to collect more money. Judges, on the other hand, are overworked and would be willing to issue adjournments to help them manage their workload (Ullah et al., 2014). According to Nasir Iqbal, published in Dawn Newspaper, February 19, 2018, the need to revise N.J.P. is highlighted through a petition as to the revision of N.J.P. including a policy on delay reduction based upon scientific assessment of the present state of affairs and its causes, and submit the same to the apex court. (Almeida, 2018) It has been further elucidated that the lack of enforcement of the fundamental right of access to justice and the loss of reputation of the judicial system in the eyes of Pakistan are due to delays in the dispensation of justice. The report further reveals that the shelf-life of an average case in the civil courts of Punjab is over 37 months, and from institution to the passing of the decree, an average case requires around 58 hearings. Ms Sarah Bandial discussed in her article published in Daily Express, February 16, 2018, the menace of delayed justice as a two-fold problem. According to her, judicial inefficiency and lack of capacity (infrastructural and intellectual) translate into delayed disposal of cases. She also blamed litigants for using dilatory tactics through frivolous claims and abusing the process of law (Print Media Coverage, 2018). According to F. Hussain (2015) and another study conducted by Chowdhury (2004), highlighted and pointed out the core reasons for delayed justice as an insufficient number of judges, corruption, lack of punctuality, irresponsibility of police in the investigation, the backlog of cases, complicated process of lawsuit and mismanagement of case system (Zafeer, 2020). According to Chowdhury (2004), in Pakistani courts, civil cases are more delayed than criminal and family cases because of more complexity and a heavy backlog of cases. He stated in his study that "Delay in our judiciary is bringing justice toward injustice". Research conducted by Burstyner and Sourdin (2014) concluded that timeliness could be assured with the help of a case management system and bringing innovative technologies in identifying the heavy backlog of cases and will, therefore, act as a catalyst to reduce delay in sub-ordinate courts. Following this, Litigation procedures in Pakistan are notoriously slow. There are numerous elements that contribute to the lengthening and delaying of the legal process in the courtroom. The study aims to identify the various factors that contribute to litigation delays. The attack on the District bar association is the subject of this study. According to the findings, authorities' indifference, lawyers' lack of professionalism, corruption, and a large backlog of ongoing cases are just a few of the issues that obstruct the masses' access to timely justice in the community. As a result, the judiciary's proper role is diminished and rendered ineffectual (M. Hussain, 2015).

This study has also identified a handful of reasons: (i) Effective Judicial Leadership (ii) Skills of judicial officer (iii) identification of disputes that can be dealt with earlier (iv) realising the principles and obligations relating to "genuine effort" by judges and advocates (v) Judges need to be bolder to ensure obligations are met (vi) There is a need to consider the "invisible determinants" of delay (vii) potentially challenging the notion of the separation of power (viii) Consideration as to whether courts can be subject to independent examination and whether in general, courts are made to become open to examination (viii) Better data collection, data analysis, data management and maintenance (ix) There is a need for qualitative assessment (x) technology innovation should be supported by frameworks and organisations to ensure that systematic innovation rather than ad-hoc innovation takes place (Jillani, 2006). Furthermore, the study outlined the discussion about delay and timeliness, highlighting some of the issues being constantly and actively considered by stakeholders of justice delayed. Moreover, Burstyner and Sourdin (2014) discussed that a proper balance between timeliness and quality of the justice experience must be maintained, which can only be measured quantitatively. Some experts suggest that delay in some courts is inevitable in a few circumstances.

Table 1.
Coding Of Factors

Code	Factors
A1	Omission of required scrutiny by Presiding Officer at the time of institution (as to maintainability, jurisdiction, material particulars and documents to be filed
A2	Lack of required skills and competence of learned Judicial Officers
A3	Lack of required and quality training of learned Judicial Officers
A4	Lack of professionalism (punctuality, laxity, behavior and attitude of Judicial Officers)
A5	Inability to handle and check recalcitrant parties
A6	Inability to curb unnecessary adjournments
A7	Inability to control the case flow and general administration
A8	Election /administrative duties
A9	Shortage of Judicial Officers
A10	Unnecessarily frequent transfers of Judicial Officers
A11	Frequent transfers of cases from one court to another
A12	Non usage of penal clauses by Judicial Officers for early disposal (cost, debarring W/S, striking off the defense, closing the side)
A13	Un-attractive service conditions of District Judiciary
A14	Incompetency and inefficiency of process service agency
A15	Shortage of staff / necessary equipment in courts
A16	Shortage of stationery and process forms
A17	Corruption in process serving
A18	Negligence of court staff in issuing process
A19	Intentional delay in depositing process fee
A20	Intentional avoidance of receiving court process
A21	Non production of UTPs
A22	Non-attendance of witnesses
A23	Delay on the part of investigating agencies e.g. non production of Police file / papers
A24	Insecurity and reluctance of witnesses
A25	Frequent and unnecessary adjournments
A26	Stay of proceedings
A27	Lack of professionalism, skills and training of advocates
A28	Unnecessary adjournments on frivolous grounds
A29	Lawyers being busy in another court
A30	Lawyers being busy in another court
A31	Lawyers have taken up cases, more than they can handle
A32	Frequents strikes
A33	Incompetent and ineffective prosecution services
A34	Filing of frivolous applications and other delay tactics
A35	Intentional delay to submit replies, W/S, C.A.s etc.
A36	One of the parties is always interested in delay
A37	ADR is not resorted to as a tool for delay reduction
A38	Delay in bringing on record the L/Rs of a deceased party
A39	Avoiding service

Continued on next page

Table 1 continued

A40	Frequent change of advocates
A41	The inability of a litigant to attend court hearings

RESEARCH METHODOLOGY

A questionnaire based on the Likert Scale from a sample of 200 respondents is used. Respondents included 100 litigants and 100 lawyers/advocates with experience ranging from two years to 50 years of practice. The most contributing factors of delayed justice are ranked using factor analysis. Descriptive and inferential statistics are applied to measure the intensity and significance of the most contributing factors. Variables are confounding in nature, having multiple factors. The other aspect of this research finds out litigation's monetary and economic costs, which increases with delaying justice. Factors that contribute to the cost of litigation are analysed using the Linear Regression model, which shows the directions and magnitude of the variables and their relationship with the dependent variable, which is "Cost of Litigation".

DATA ANALYSIS

Factor analysis is used to point out and identify the most contributing factors of delayed justice as per the responses collected from the sample of 100 advocates/lawyers and 100 litigants. Using the coded factors, this study reached out to the most contributing 18 out of the 41 identified factors listed above. Using the factor analysis, 18 most important factors of the delay in Karachi District courts are identified and investigated.

Table 3.

Regression analysis

Model	Unstandardised Coefficients		Standardised Coefficients Beta	T	Sig.	Collinearity Statistics	
	B	Std. Error				Tolerance	VIF
(Constant)	-104.402	12.792		-8.161	.000		
Unnecessary adjournments on frivolous grounds	5.982	1.147	.319	5.215	.000	.920	1.087
Filing of frivolous applications and other delay tactics	6.256	1.194	.317	5.241	.000	.941	1.063
One of the parties is always interested in delay	5.227	1.137	.281	4.599	.000	.926	1.080

Continued on next page

Table 3 continued

Non usage of penal clauses by Judicial Officers for early disposal (cost, debarring W/S, striking off the defense, closing the side) striking off the defense, closing the side)	3.889	1.112	.212	3.497	.001	.941	1.062
Lack of professionalism, skills and training of advocates	4.441	1.164	.228	3.817	.000	.964	1.037
Stay of proceedings	2.985	1.190	.158	2.507	.013	.869	1.151
Intentional delay to submit replies, W/S, C.A.s etc.	3.376	1.148	.177	2.939	.004	.949	1.054
Lack of required skills and competence of Judicial Officer.	3.531	1.175	.188	3.006	.003	.885	1.130
Ineffective prosecution services	2.383	1.037	.136	2.298	.023	.980	1.020
Non-attendance of witnesses	3.423	1.216	.172	2.816	.006	.927	1.079
Insecurity and reluctance of witnesses	2.993	1.140	.159	2.625	.010	.941	1.063
Omission of required scrutiny by Presiding Officer at the time of institution (as to maintainability, jurisdiction, material particulars and documents to be filed	2.945	1.203	.149	2.447	.016	.932	1.073
Lack of required and quality training of Judicial Officers	2.608	1.085	.145	2.404	.018	.953	1.050

Hence, a positive relationship between the dependent variable (delayed justice) and independent variables (factors identified of delayed justice) shows that factors identified have a direct relationship. In findings like such, this study rejects H0. The ten most significant factors include: Unnecessary adjournments on frivolous grounds, filing of frivolous applications and other delay tactics, lack of required skills and competence of judicial officers, lack of required and quality training of judicial officers, Non-usage of penal clauses by judicial officers for early disposal (cost, debarring W/S, striking off the defense, closing the side), One of the parties is always interested in delay, lack of professionalism, skills and training of advocates, stay of proceedings, incompetent

Table 2.
Factor analysis

Sr. No.	Factor	Score
1	Unnecessary adjournments on frivolous grounds	.590
2	Filing of frivolous applications and other delay tactics	.550
3	Intentional delay to submit replies, W/S, CAs etc.	.531
4	Lack of required and quality training of Judicial Officers	.519
5	Non-usage of penal clauses by Judicial Officers for early disposal (cost, debarring W/S, striking off the defence, closing the side) striking off the defence, closing the side)	.518
6	One of the parties is always interested in delay	.515
7	Lack of professionalism, skills and training of advocates	.515
8	Stay of proceedings	.495
9	Incompetent and ineffective prosecution services	.490
10	Avoiding service	.480
11	Insecurity and reluctance of witnesses	.478
12	Lack of professionalism (punctuality, laxity, behavior and attitude of Judicial Officers)	.460
13	Non-attendance of witnesses	.450
14	Lack of required skills and competence of Judicial Officer	.447
15	Corruption in process serving	.440
16	Omission of required scrutiny by Presiding Officer at the time of institution (as to maintainability, jurisdiction, material particulars and documents to be filed	.428
17	Un-attractive service conditions of District Judiciary	.414
18	Shortage of Judicial Officers	.410

Table 4.
ANOVA

Model	Sum of Squares	Df	Mean Square	F	Sig.
Regression	56429.064	13	4340.697	11.846	0.000
Residual	49833.709	136	366.424		
Total	106262.773	149			

Table 5.
Model Summary

R	R Square	Adjusted Square	R	Std. Error of the Estimate	Durbin-Watson
0.729	.531	.486		19.14221	2.014

and ineffective prosecution services, avoiding service, insecurity and reluctance of witnesses.

DISCUSSION

This study encompasses all the possible and prospective scenarios of delayed justice and what possible challenges stakeholders of justice face and how they deal with them, especially litigants, who have to travel from far-flung areas just to appear before the Hon'ble courts only to find out that matter is adjourned and put off for the next date of hearing. Despite many studies on delayed justice and having an ideal document and policy framework which is yet to be implemented in its letter and spirit, the national judicial policy, Pakistani justice system is failing on the face of it. Steps are required to be done on a fundamental level and grass-root level. Suppose only district courts start managing the state of affairs in a more disciplined manner and have a fair check on the causes of delayed justice identified in this study. In that case, many problems and factors of delayed justice will be addressed much more effectively. Moreover, knowing the problem is half the solution. When it is established through this study that delayed justice results in an excessive cost of litigation, relying on the information and taking concrete steps will give monetary relief to the litigants as well because of cutting short the delays in the Pakistani judicial system.

CONCLUSION AND RECOMMENDATIONS

In the light of the findings of this study, the factors identified by this research study causes of delay in the Pakistani legal system are suggested and recommended being addressed in the following ways:

The issue such as lack of due professionalism required skills and training of advocates may be dealt with the help of special training programs, training modules, training workshops, seminars to be organised and conducted by the bar in collaboration and partnership with training-based organizations specialized and experienced master trainer in Sindh Judicial Academy and other such professional training forums. That should be a regular feature and core of the bar activities to engage a mass level of number advocates. The frequency of such training programs will keep young advocates aligned with the norms and values of advocacy which is lacking in the current times.

The bar may hold weekly, and monthly workshops on involving senior advocates as senior advocates are especially involved and interested to contribute their professional experience, especially those who have remained away from bar activities and made a wise professional reputation and attained expertise in their area of specialisation, on specialised areas such as mediation, child rights, rent laws, the law of bail, juvenile justice system ordinance, gender-based violence courts. Another much-needed measure to be taken on war footings in district judiciary for advocates especially is an exclusive English language course by specialised linguists and senior advocates, for young advocates thrice a week. This training module should also hold special spoken English training and legal drafting and writing along with comprehension.

Unnecessary adjournments on frivolous grounds: The menace of unnecessary adjournments on frivolous grounds can be combated by curtailing the discretion of a learned judge to allow an adjournment. Or imposition of a cost of Rs. 500 on first adjournment, Rs. 1000/- on every adjournment thereon. Or at least a token cost of Rs. 100/- be imposed on every adjournment application to curtail the unnecessary adjournments on frivolous grounds. In this regard, one such example was seen in 2009 in N.W.F.P. with the name of Shariah Nizam-e -Adl Regulation, 2009 (N.W.F.P Reg. No. I of 2009). There shall be no adjournments and, even if granted, shall be granted at the cost of Rs. 2000/- Filing applications on frivolous grounds should be dismissed in limine¹. Here, the boldness of a judge is required, along with a courageous initiative to dismiss the same without even notice. Or to put a cost on applications being filed on the frivolous ground to play with time. Section 35-A C.P.C. 1908 provides compensatory costs to be imposed. In the presence of such statutory procedural provisions, these provisions may be implemented and imposed to tackle such frivolous applications on baseless grounds.

Lack of Skills, Competence and Training of Judicial Officers: Courses in the academy and other training forums should be designed in line with the international training modules, emphasising capacity building enriched with a proactive approach and vision towards problem-solving handling complex and challenging situations. For that, they should be a part of moot training programs to adjudicate and hone/refine/adapt necessary skills much before assuming the real-world hardcore challenges. This is also very important, especially when one of the parties is always interested in delay. Usually, weak parties in civil suits tenants in rent cases with a frivolous claim or defence are always interested in delaying the issue/matter and playing with time. Here, the proper skills and competence are tested, demanding necessary action under the law.

Moreover, exchange programs with international organisations and foreign study visits enhance the exposure and broaden the horizons of judicial officers, enabling them to refine their mettle and adapt best practices of the world on any pertinent issue. In this regard, field visits and study trips to the U.K., U.S.A., Denmark, and S.A.A.R.C. countries are proposed. Another essential factor identified in a study is "Stay on Proceedings". It is observed in local practice that a party who has taken stay order from the Hon'ble higher forum usually avoids appearing for the final hearing of the case, as the matter in the trial court, execution proceedings are stayed because of the stay on proceedings by the appellate court. Therefore, staying on proceedings has also emerged as a potent reason or a cause of delaying justice. In response to such circumstances or situations, the appeal should be given priority compared to fresh cases. Another suggestion or proposition through this study is to have at least 1/4th of the appellate court judges exclusively dedicated to deciding appeals and matters about appeals and revisions. Furthermore, revision should be decided on priority. Especially, N.J.P.C. recommendation for revision should adhere.

Weak & in effective prosecution services: It is also identified that weak prosecution services, unavailability of police files on the date of hearing, poor preparation of prosecutors while proceeding with criminal cases also causes a delay in judicial proceedings. In this regard, this study proposes that regular and active performance evaluation of deputy and assistant public prosecutors should be done with the help of a standardised performance and set their performance evaluation benchmark. The prosecution services department reviews the prosecutors' performance monthly or bi-monthly. This will identify serious prosecutors and those not performing up to the mark. Incentives should be given to the prosecutors with better results and a high conviction rate in monetary incentives and international training programs in different countries where prosecution services are of quality par excellence.

¹ as a preliminary matter —used for motions regarding the admissibility of evidence brought up at a pretrial hearing.

Avoiding service: Usually, a party, especially at default, avoid service. A judicial officer should actively and minutely see the bailiff report and seek a substitute address or job address to ensure good service. The matter should be proceeded according to law. Moreover, when the bailiff report appears in non-compliance, a judicial officer seeks Order V rule 20 application for substitute service; however, he may do that without any such application. Proceeding swiftly towards substitute service can also shorten the duration of prolonged litigation.

Shortage of judicial officers: This is also seen and identified as an essential factor of delayed justice. However, the number of judges and strength of judges in city courts of Karachi seems a potent problem mainly due to the shortage of proficient officers in a vital station as Karachi. The best of the best officers are posted in cities of interior Sindh, where the backlog of cases and overall litigation is not as humongous as Karachi, where the crime rate is ever-increasing, and civil disputes are never-ending. Under these circumstances, this study proposes that best and competent officers be posted significantly in the critical station as Karachi, which is heavily loaded with a backlog of cases and overall litigation volume and strength compared to the qualitative strength of the judicial officers.

Insecurity of witnesses: Insecurity of witness, despite legislation, the witness is not habitual of court environment, he usually avoids court. He should be taken with care and attended on priority. In case the matter is adjourned, he should be sent back immediately. This study proposes that better facilities be provided to the witnesses in the portals of city courts as most of the witnesses are not used to the environment of courts and hence usually avoid appearing in court for their testimony. It is proposed that they may be provided and facilitated with proper sitting area, Wi-Fi internet facility, newspaper corner in the waiting area, preferably T. V and make every arrangement to ensure conducive environment and atmosphere, so the witnesses coming for the evidence will not be discouraged with the current and prevailing situation and environment of city courts. Moreover, when the court feels that any witness is not appearing in order to delay the judicial and court proceedings or in the pursuance of concealing any fact essential for the determination of rights of the parties, the court should, in exercising penal clauses, may issue non-bailable warrants against such witnesses.

Process serving: For adequate process serving, bailiff to be given a smartphone to be used at the address of service upon the party and taking a picture of delivering notice/summons or geotagging means to ensure that bailiff honestly complying to his duty, went to the address and did his job with utmost honesty whether someone is found on address or not and where he finds anyone to serve the process, the bailiff, using smartphone technologies, ensure the process serving. Precisely, use of technology in process serving,

Service conditions: Service conditions in city courts are much better than before, but as far as infrastructure is concerned, sitting of the presiding officer, and normally presiding over the court and taking up matters sitting without electricity, internet and even when there is less load shedding, facility of the air conditioner is not provided to the judicial officer and yet it is expected from him to give disposal sufficient enough to overcome the backlog is slightly unfair to him. At the same time, this study appreciates the rest of the conditions, especially salary structure made much more lucrative. District judiciary may adhere to penal clauses for early disposal (cost, debarring W/S, striking off the defense, closing the side). It was striking off the defense, closing the side). Most importantly, right at the institution of a suit, if a judicial officer conforms to the omission of required scrutiny by Presiding Officer at the time of institution (as to maintainability, jurisdiction, material particulars, and documents to be filed, this will also result in increasing number of case institution and ratio of case disposal to case institution will improve.

This research paper advocates the policy propositions for delay reduction in the civil and criminal justice system as a matter of public policy and in the supreme interest of justice. The empirical analysis has highlighted the underlying socio-economic factors of delayed justice to address the basic grievance of the general public. This is also imperative to reduce the backlog of cases pending adjudication in different courts of the city courts Karachi.

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